

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS

In re MICHAEL J. THOMAS)	Case No. 06-30170
)	
Debtor)	Chapter 13

ORDER OVERRULING
NEIGHBORS CREDIT UNION'S
OBJECTION TO CONFIRMATION OF FIRST AMENDED PLAN

This matter comes before the Court on Neighbors Credit Union's Objection to Confirmation of the first amended Chapter 13 plan of Michael J. Thomas. For the reasons stated below, the Court overrules the objection.

On February 4, 2005, Debtor purchased a 2005 Pontiac Grand Prix ("vehicle") from Laura Buick Pontiac GMC Van Inc. The purchase was financed through Wells Fargo Financial Acceptance ("Wells Fargo"). The amount financed by Wells Fargo was \$32,191.89 to be paid at 17.25% interest. This amount was to be paid by 72 monthly payments of \$725.82.

On July 25, 2005, Debtor refinanced the purchase loan through Neighbors Credit Union fka St. Louis Postal Credit Union (hereinafter "Neighbors"), paying Wells Fargo in full and giving Neighbors a security interest in the vehicle. The amount financed was \$31,982.57 at 9.65% interest. This amount was to be paid by 147 bi-monthly payments of \$290.64.

On February 13, 2006 Debtor filed a petition under Chapter 13 of the Bankruptcy Code and listed Neighbors as a secured creditor. Debtor's Chapter 13 Plan proposes to pay Neighbors the sum of \$17,000 at 7% interest. Neighbors has filed a claim for \$30,330.75.

Neighbors' objects to its treatment in the chapter 13 plan claiming that Debtor had incurred the loan within 910 days of the filing of his Chapter 13 bankruptcy and therefore the loan must be paid in full pursuant to the so-called "hanging paragraph" at 11 U.S.C. § 1325(a)(9).

At issue in this case is whether Debtor's refinancing of the purchase loan destroys the purchase money security interest of the original lender, thereby giving the refinancing creditor a security interest that can be "crammed down" pursuant to 11 U.S.C. § 506, or, does the refinancing creditor inherit or otherwise retain the purchase money security interest which would bar the Debtor from "cramming down" the security interest under the "910 Rule" found at 11 U.S.C. §1325(a)(9)?

Section 1325 (a)(9) states in relevant part:

For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a **purchase money security interest** securing the debt that is the subject of the claim, the debt was incurred within the 910-day preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle...acquired for the personal use of the debtor....(emphasis added)

Section 506(a)(1) states in relevant part:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest...is a secured claim to the extent of the value of such creditor's interest...and is an unsecured claim to the extent that the value of such creditor's interest...is less than the amount of such allowed claim.

Taken together, these two sections of the bankruptcy code allow a debtor to pay a secured creditor the value of a piece of collateral as opposed to the claim amount, unless, if the collateral is a motor vehicle purchased within the 910 days preceding the bankruptcy's filing for the personal use of the debtor, the creditor has a purchase money

security interest (“PMSI”) in the collateral. Without such a PMSI, the creditor is simply a secured creditor, and the claim may be “crammed down” to the value of the collateral.

The definition of PMSI is given in the Uniform Commercial Code of Illinois. Illinois U.C.C. § 9-103 states in relevant part:

(a) Definitions. In this Section: (1) “purchase-money collateral” means goods or software that secures a purchase-money obligation incurred with respect to the collateral; and (2) “purchase-money obligation” means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) Purchase-money security interest in goods. A security interest in goods is a purchase-money security interest: (1) to the extent that the goods are purchase money collateral with respect to that security interest....

810 ILCS 5/9-103

Under the Illinois UCC, Neighbors does not have a PMSI. It did not give Debtor a purchase money loan that “enable[d] the debtor to acquire rights in or the use of” the collateral. When Neighbors refinanced the Debtor’s loan, the Debtor had already owned and been using the collateral for several months. The Neighbors’ loan, therefore, could not be a purchase money loan, and Neighbors’ interest cannot be a PMSI.

Neighbors argues further that under Illinois law, the court should adopt a case by case approach which examines whether the debtors’ obligation has been so changed by the refinanced loan that the resulting lien can no longer be characterized as a purchased money security interest. *In re Short*, 170 B.R. 128, 134 (Bankr.S.D.Ill., 1994).

Based on the facts that the identity of the creditor changed, that the interest rate changed, that the amount of payments changed, and the timing of the payments changed, the Court finds that the Debtor's obligation was so altered by the refinancing that the resulting lien no longer retained its PMSI characteristics. Based on the hanging paragraph of 1325(a)(9) and 810ILCS 5/9-103, the Court finds that Neighbors does not have a PMSI upon the vehicle at issue in this case.

For the reasons set out herein, the Court concludes that Neighbors' claim can "crammed down" under Section 506(a)(1) of the Bankruptcy Code. Neighbors Credit Union's objection to confirmation is thereby overruled.

ENTERED: September 15, 2006

/s/ James K. Coachys
UNITED STATES BANKRUPTCY JUDGE

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SOUTHERN DISTRICT OF ILLINOIS

In re MICHAEL J. THOMAS)	Case No. 06-30170
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Debtor)	Chapter 13

ORDER

Pursuant to the Court's Order entered this date, IT IS ORDERED that Neighbors Credit Union's objection to confirmation is OVERRULED.

ENTERED: September 15, 2006

/s/ James K. Coachys
UNITED STATES BANKRUPTCY JUDGE